

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant, v. Pablo Saucedo, Individually and d/b/a Socorro Bar, Respondent; 8 USC 1324a Proceeding; Case No. 88100127.

JUDGMENT BY DEFAULT

On September 23, 1988, Complainant, the Immigration and Naturalization Service (INS), filed a complaint (8 USC 1324a Proceeding) with the Office of the Chief Administrative Hearing Officer (OCAHO) against Pablo Saucedo, Individually and d/b/a Socorro Bar, (Respondent, herein). OCAHO docketed the complaint as Case No. 88100127. By date of October 5, 1988, the Chief Administrative Hearing Officer issued a notice of hearing on the INS's complaint, attached a copy of the complaint to the notice of hearing, and mailed both by certified mail to the Respondent. Because service could not subsequently be verified by OCAHO, INS was requested to serve a copy of the notice of hearing and complaint to ensure receipt of same by Respondent. On November 8, 1988 Respondent, Pablo Saucedo, was served in person with copies of the notice of hearing and the complaint filed by INS as evidenced by the certificate of service submitted by Complainant with its January 4, 1989 motion for default judgment.

Among other provisions, the notice of hearing informed Respondent that an answer to the complaint must be filed within 30 days after receipt of the complaint. I take official notice that Respondent received the notice of hearing and copy of the complaint on November 8, 1988. Paragraph 3 of the notice of hearing warned Respondent that:

3. If the Respondent fails to file an Answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the Complaint, and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.

By letter dated November 8, 1988 addressed to Complainant's counsel, Jose J. Tavarez, Respondent asserts he has never violated

section 274A(a)(1)(B) of the Act, and he requests that OCAHO assign an administrative law judge to hear the case and dismiss it. Subsequently, on November 29, 1988 attorney for Complainant, Jose J. Tavarez, sent Respondent a letter certified mail return receipt requested, informing Respondent that, among other considerations, his letter dated November 8, 1988 was merely another request for a hearing and was deficient as an answer. This letter to Respondent was ostensibly received by him on December 2, 1988 as shown by the copy of the return receipt included with Complainant's January 4, 1989 motion for default judgment.

Opening his November 29 letter to Saucedo by observing that Saucedo had been served personally on November 8, 1988 with a copy of the complaint (and the NIF), Tavarez continues as follows, in relevant part:

Subsequently, on November 16, 1988 this office received a request for hearing from you dated November 8, 1988. It is apparent that you may be confused with the request for hearing and the answer to the complaint which is a different document which must be filed with the Honorable Richard J. Linton within 30 days from the receipt of the complaint by you. Since you were served with a copy personally on November 8, 1988, you must file a complaint within 30 days from November 8, 1988 or you may be subject to judgment of default for failing to plead or otherwise defend the complaint against you. See paragraph no. 2 [sic] of the Notice of Hearing on Complaint Regarding Unlawful Employment which was served upon you, as stated above, on November 8, 1988.

Alleging that Respondent Saucedo has violated provisions of 8 USC 1324a, the complaint incorporates a July 28, 1988 notice of intent to fine (NIF) issued by the INS and served on Respondent in person on July 29, 1988. By his August 16, 1988 notice to the INS, Saucedo denied the allegation of the NIF and, in effect, requested a hearing. The NIF alleges two KNOWLEDGE violations of Section 274A(a)(1)(A) of the Act,¹ and two VERIFICATION violations of Section 274A(a)(1)(B).²

The NIF warns Respondent that the INS will seek an order fining him \$2,000 for the KNOWLEDGE violations and \$1,000 for the VERIFICATION violations for a grand total of \$3,000. The complaint, which incorporates the NIF, also requests an order directing

¹Section 274A(a)(1)(A) of the Immigration and Naturality Act (the Act) [8 USC 1324a(a)(1)(A)] makes it unlawful after November 6, 1986 for a person or other entity to hire, or to recruit or refer for a fee, an alien for employment in the United States, knowing the alien is unauthorized to work in the United States.

²Section 274A(a)(1)(B) [8 USC 1324a(a)(1)(B)] makes it unlawful to hire an individual for employment in the United States without complying with the verification requirements (on Form I-9) of 8 USC 1324a(b), and 8 CFR 274a.2(b) or 274a.2(b)(2). Section 274A(b)(3) [8 USC 1324a(b)(3)] requires the employer or referring entity to retain, for a specified period, the verification form (Form I-9) and to make it available for inspection by officers of the INS or the Department of Labor.

Respondent Saucedo to cease and desist from violations of Section 274A(1)(A) and to pay the civil money penalty of \$3,000 as specified in the NIF.

By his notice dated August 16, 1988, Respondent denies the allegations of the NIF and, in effect, requests a hearing before an administrative law judge. Although Respondent, on November 8, 1988, again denied violating the Act and again requested a hearing, he has not filed an answer as required by 28 CFR 68.6.

Because service of the complaint was made on Saucedo in person on November 8, 1988, his answer to the complaint was due 30 days later, or Thursday, December 8, 1988. Respondent Saucedo having failed to file an answer to the complaint, Complainant has filed a motion, dated January 4, 1989, seeking a default judgment pursuant to 28 CFR 68.6(b). Although service of the motion for default judgment was effective with the January 4, 1989 mailing, 28 CFR 68.5(d)(1), I officially note that a copy of the motion was delivered to Respondent, and signed for by an individual there on January 6, 1989, as shown by a copy of the return receipt card attached which Complainant has submitted to me by letter of January 13, 1989, copy to Respondent. Saucedo has not filed an opposition to Complainant's motion for default judgment within the 10 days allowed by 28 CFR 68.7(b) or the additional 5 days granted (to Thursday, January 19, 1989) by 28 CFR 68.5(d)(2).

The formal hearing specified by the Act, 8 USC 1324a(e)(3), is a hearing conducted before an administrative law judge in accordance with the requirements of the Administrative Procedure Act (APA), 5 USC 554. Pursuant to 8 USC 1324a, the rules promulgated for governing such formal hearings are those to be codified as 28 CFR Part 68. Under the rules, a complaint (not the NIF) is the formal document initiating an adjudicatory proceeding, 28 CFR 68.2(g). As already noted, an answer must be filed to the complaint, and failure to file an answer may result in a default judgment. 28 CFR 68.6.

Respondent Saucedo having failed to file an answer to the complaint, and the time for filing an answer having expired, I FIND Respondent Saucedo has waived his right to appear and contest the allegations of the complaint and that a judgment by default is appropriate. 28 CFR 68.6(b). ACCORDINGLY,

I FIND the Respondent, Pablo Saucedo Individually and d/b/a Socorro Bar, in default. I THEREFORE FIND Respondent Saucedo committed knowledge and verification violations alleged in the NIF, incorporated in the complaint, and I CONCLUDE that, by so doing, Respondent Saucedo violated Section 274A of the act, 8 USC 1324a. CONSEQUENTLY,

I ORDER Pablo Saucedo, Individually and d/b/a Socorro Bar, to:³

1. CEASE AND DESIST from violating Section 274A(a)(1)(A), 8 USC 1324a(1)(A), of the Immigration and Nationality Act, which renders it unlawful after November 6, 1986 for a person or other entity to hire an alien for employment in the United States knowing the alien is unauthorized to work in the United States.

2. COMPLY WITH the employment eligibility verification requirements of the Act, Section 274A(b), 8 USC 1324a(b), respecting individuals hired, recruited, or referred for a fee, for employment in the United States, for a period of 3 years.

3. PAY A CIVIL MONEY PENALTY, within 14 days from the date of this Judgment By Default, in the amount of \$3,000 in the form of cash or a cashier's check, certified check, money order, or bank check made payable to the ``Immigration and Naturalization Service.'' and delivery same to: Chief Patrol Agent, United States Border Patrol, 8901 Montana Avenue, El Paso, Texas 79725.

The hearing scheduled to begin March 28, 1989, in El Paso, Texas is hereby canceled.

SO ORDERED.

Dated at Atlanta, Georgia this February 3, 1989.

RICHARD J. LINTON
Administrative Law Judge

³Review of this final order may be obtained by complying with the provisions of 28 CFR 68.52.